No. 23

In the Supreme Court of the United States

OCTOBER TERM, 1944

E. JACK SMITH, JACK CLARK, R. L. RIVERS, AND W. CORRY SMITH, PARTNERS TRADING UNDER THE FIRM NAME OF E. JACK SMITH, CONTRACTOR, PETITIONERS

v.

COMER DAVIS, REESE PERRY AND JOHN C. TOWNLEY, AS BOARD OF COUNTY TAX ASSESSORS OF FULTON COUNTY, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

On October 16, 1944, the Court entered an order requesting the Government to file, as amicus curiae, a brief "upon the questions whether 31 U. S. C. Sec. 742 is applicable to the obligation here involved, and if so applicable whether there is constitutional authority for the enactment."

I

THE SCOPE OF THE STATUTE

The statute involved (Section 3701, Revised Statutes, 31 U. S. C. 742) provides:

> All stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority.

The Government is of the view that this statute does not apply to the obligation here involved. According to the allegations of the original and amended petitions filed in the trial court the obligation is a sum due the petitioner from the United States in the amount of $29,831.10 under two contracts for work, labor and materials furnished in connection with the construction of two airports at Savannah, Georgia. (R. 5, 6, 15–16.) The record does not show that any conditions precedent needed to be fulfilled in order to secure payment from the Government or that anything other than the formal mechanics of payment remained to be performed. In this connection it should be observed that the allegation is that the sum represented (R. 16) "the balance due under the terms of" petitioners' contracts with the Government. It should also be noted that of the two contracts upon which the balance was due, one was approved on June 30, 1941 (R. 32) and was required to be completed within 120 days from receipt of notice to proceed (R. 21) and the other contract was approved July 12, 1941 (R. 44) and was required to be completed within 60 days from receipt of notice to proceed (R. 33). These facts support the inference which we suggest that only the

mechanics of payment remained to be completed. In this aspect of the case it is difficult to draw any distinction between the situation here presented and that involved in *Hibernia Savings Society* v. *San Francisco*, 200 U. S. 310, in which it was held that government checks, although literally obligations of the United States, were not obligations within the meaning of this statute. We do not, however, rest our view that the statute is inapplicable upon this narrow ground but upon the broader ground that obligations to pay for work or services performed, regardless of how far the obligation has ripened, are not the kind of obligations covered by the statute.

The statute is the most comprehensive of seven similar exemption provisions, all of which were included in measures providing for issuance of United States bonds or Treasury notes. All but one [1] of these acts provided only for exemption of "stocks", "bonds," or "other securities of the United States," [2] and did not contain the phrase "other obligations of the United States." The single statute which did include other "obligations" was followed in the Revised Statutes.

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[1] Act of June 30, 1864, c. 172, 13 Stat. 218, Sec. 1.

[2] Five applied only to notes or bonds issued under the particular Act. Act of March 3, 1863, c. 73, 12 Stat. 709, Sec. 1; Act of March 3, 1864, c. 17, 13 Stat. 13, Sec. 1; Act of January 28, 1865, c. 22, 13 Stat. 425, Sec. 1; Act of March 3, 1865, c. 77, 13 Stat. 468, Sec. 2; Act of July 14, 1870, c. 256, 16 Stat. 272, Sec. 1; one applied to all bonds and securities. Act of February 25, 1862, c. 33, 12 Stat. 345, Sec. 2.

Although the Congressional records disclose no discussion of the exemption provisions, either in committee or on the floor at the time of their enactment, the question of the exemption of federal securities did receive close attention in 1894. In the meantime by the decision in *Bank* v. *Supervisors*, 7 Wall. 26, the Court had held valid the three above-mentioned exemption provisions which related to United States legal tender notes ("greenbacks"), which had been issued to help defray the cost of the Civil War and were intended to circulate as money. The City of New York had imposed a tax upon the capital of banks and included therein substantial amounts of these notes. It was urged that the notes were issued as money, that their controlling quality was that of money, and that therefore they were subject to taxation to the same extent as money.[3] The Court recognized "the force in the argument," saying (p. 30):

> Nor is it easy to see that taxation of these notes, used as money, and held by individual owners, can control or embarrass the power of the government in issuing them for circulation, more than like taxation embarrasses its power in coining and issuing gold and silver money for circulation

[3] It was well known that banks and individuals were using the greenbacks as a means of avoiding taxation, even shifting large quantities from state to state so that various banks had on hand on tax day large amounts of the notes. See 26 Cong. Record, Part 7, pp. 7169–7170.

but held that they were by their terms nonetheless obligations of the United States, and therefore "securities" or "notes" within the meaning of the applicable statutes. The Court further observed that although taxation of the notes would not bring the same "inconveniences as would arise from taxation of bonds and other interest-bearing obligations of the government" (p. 30), it could not be said that no embarrassment would arise from such taxation; and that it was therefore within the discretion of Congress to determine whether their usefulness, as a means of carrying on the Government, would be enhanced by exemption from taxation.

Thereafter, Congress enacted a statute[4] which provides that all legal tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, shall be subject to taxation as money on hand or on deposit under the laws of any state or territory. This repealed the exemption of greenbacks and ended the use of legal tender notes to avoid property taxes. The measure was vigorously debated[5] and its passage indicated, even as of that time, a Congressional policy that private advantage should not be taken of federal exemptions where the Government derived no substantial corresponding benefit, or, perhaps, more specifically,

[4] Act of August 13, 1894, c. 281, 28 Stat. 278, Sec. 1 (31 U. S. C. 425).

[5] 26 Cong. Record, Part 4, p. 3506; Part 7, pp. 7139, 7168, 7182, 7199; Part 8, pp. 7800, 8014, 8145, 8208, 8210, 8280, 8318, 8362.

that the tax exemptions of Government obligations should extend only to interest-bearing bonds and securities.

As a matter of technical construction the exemption accorded by Section 3701 applies only to interest-bearing obligations.[5] Under the rule of *ejusdem generis*, the general words "other obligations" are qualified by the nature of the preceding list of enumerated obligations, all of which are interest-bearing in character.[6] Moreover, this appears to be the construction already accorded this statutory provision by this Court in *Hibernia Savings Society* v. *San Francisco, supra.* There, an action had been begun in the California courts to recover property taxes paid under protest on two United States Treasury checks or orders, owned by the plaintiff, and which were issued to it by the Secretary of the Treasury for interest accrued upon registered bonds of the United States under Section 2698, Revised Statutes, which required the Secretary to pay any interest falling due on any portion of the public debt. The checks were payable at any time within four months from their date and were held by the plaintiff until

[5] The section refers expressly to stocks, bonds, and Treasury notes. The first two of these are clearly interest-bearing, and when read with the statute referred to in note 4, *supra*, the only Treasury notes which could be included would be of the same character.

[6] The words "other obligations" would extend, for example, to the certificates of indebtedness involved in *Banks* v. *Mayor*, 7 Wall. 16.

after the day for return of taxable property. The plaintiff urged that the checks were "obligations of the United States" and therefore exempt under Section 3701. It urged, too, that they represented interest upon Government bonds, and that the obligation of the Government to meet the interest upon its bonds would have constituted a property right which could not have been taxed under state authority. However, the claimed exemption was denied and the decision rested, at least in part, on the ground that the statute applies only to obligations issued as a means of raising money by borrowing.

A very closely analogous situation was presented in *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84,[1] which ruled that a statutory exemption from the federal income tax of interest on "obligations of the United States" was intended only to aid borrowing by the Federal Government. In that case a foreign corporation received a refund of income taxes and substantial interest. The Commissioner assessed the interest as income under a section of the Revenue Act of 1926 which provided that foreign corporations should pay tax on income derived from sources within the United States and defined such income as including "interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise". The taxpayer claimed that the interest upon its

[1] See also *American Viscose Corp.* v. *Commissioner*, 56 F. 2d 1033 (C. C. A. 3d), certiorari denied, 287 U. S. 615.

refund was not includible under that section, or if it were, that it would be exempt under a section which excluded from gross income interest on "obligations of the United States". Both contentions were rejected. The Court held that the use of the word "obligation" in the two sections was employed with different intent: the exemption provision was intended only to aid the borrowing power of the Federal Government by making its interest-bearing bonds more attractive to investors, and was, therefore, not applicable to interest on a tax refund, while the other section was not designed to encourage loans but to produce revenue and should be construed to effect that end.

A similarly limited construction has been accorded another analogous provision exempting from income tax interest on the obligations of states or their political subdivisions, in cases which hold that interest on condemnation awards, while literally interest upon such obligations, is not within the exemption. *Kieselbach v. Commissioner*, 317 U. S. 399, 404–405.

If, as we suggest, Section 3701 applies only to obligations issued pursuant to the borrowing power, then it is plain that it does not extend to the situation here involved. In the instant case the Government was not making use of its credit to raise money or to extend the time for payment of an obligation. Indeed, the contract provided for progress payments (R. 28, 40–41) as the work proceeded and this is the very

antithesis of credit. While the contracts did empower the Government to retain 10 percent of each progress payment, the purpose of this provision was merely to insure satisfactory performance, not to grant credit to the Government.

II

THE SCOPE OF CONGRESSIONAL POWER

We understand the second question to be directed to the proposition whether Congress can extend immunity beyond the limits within which it would be implied from the Constitution, and to rest therefore upon the assumption that there is no implied constitutional immunity from the tax here involved. If we are correct in our view that the statute is inapplicable, it will be unnecessary to deal with this question. However, if the Court should disagree with our position upon the first question, then this question will have to be met. The Government's position upon this point is that Congress clearly has the power to create such an immunity. This general question was noted in *Graves* v. *N. Y. ex rel. O'Keefe*, 306 U. S. 466, 478–479, in which the Court said:

> Whether its [Congress] power to grant tax exemptions as an incident to the exercise of powers specifically granted by the Constitution can ever, in any circumstances, extend beyond the constitutional immunity of federal agencies which courts have implied, is a question which need not now be determined.

The same question was noted in the concurring opinion by Mr. Justice Frankfurter in that case (p. 492), and in *Alabama* v. *King & Boozer*, 314 U. S. 1.

We think that the power of Congress to create the suggested immunity may be rested upon the simple proposition that Congress has the implied power to do what is appropriate in the achievement of an end within its express constitutional authority. Certainly it cannot be doubted that Congress had the power to authorize the building of the air bases and the making of contracts for their construction. If Congress should consider it appropriate in order to induce contractors to take the work to declare such an immunity, we think that that legislative determination should be conclusive. So long as there is a reasonable relationship between the legislation and the end which it is designed to promote, the courts will not reexamine the Congressional decision that the statute is necessary and proper. *McCulloch* v. *Maryland*, 4 Wheat. 316; *Logan* v. *United States*, 144 U. S. 263, 283; *Interstate Commerce Comm.* v. *Brimson*, 154 U. S. 447, 473–474.

In the field of tax immunity there are other weighty considerations which in our view lead to the conclusion that the suggested power must rest with Congress. The recent decisions of this Court in the immunity field constitute recognition that the broad question of the entire relationship of the state and national governments with respect to the impact of taxation is not one which is susceptible

of satisfactory resolution by the judicial process. See *United States* v. *Allegheny County*, 322 U. S. 174, 176, 190. The problem, especially insofar as the indirect effect of state taxation upon the National Government is concerned, is one peculiarly appropriate for congressional determination. This is consistent with the latest decision in the field, *United States* v. *Allegheny County, supra,* for it recognizes the power of Congress to waive even a direct tax upon the United States. In essence, therefore, the Court has come to the view that the ultimate decision of immunity *vel non* for the National Government rests with the Congress.

The considerations entering into a determination of such problems are numerous, varied and complex. Although extension of immunity in a situation such as that here presented might deprive the states of some immediate tax revenue, that is not the end of the inquiry. Numerous benefits flow to any state in which business activity is stimulated by the National Government, not the least of which is increased tax returns. Burdens of other nature, such as a strain on police, fire, educational and other like facilities, and benefits such as acceleration in the growth of cities with attendant attractiveness to other industry, and so forth, also result. To the National Government the most immediate benefit would be in the reduction of the cost of construction and a perhaps greater readiness on the part of contractors to take its work. To assign to these and other factors values both quantitative and qualitative, to assay

them and to strike a balance between the needs and interests of state and nation, is peculiarly appropriate for the legislative process (cf. *United States* v. *Allegheny County, supra,* pp. 189–191) and it should be emphasized that the legislative determination would be made by a body representative of each and all of the states. And so if Congress should choose to grant immunity in a situation such as is here presented, that conclusion would represent the judgment of the states themselves through their own representatives as to the balance of benefit and burden. Cf. *Helvering* v. *Gerhardt,* 304 U. S. 405, 412.

Numerous cases have expressly recognized the power of Congress to create a tax immunity which would not be implied in its silence and have extended tax immunity, in part at least, in obedience to a Congressional provision. Still other cases have denied immunity on the ground that Congress had provided none.

In *James* v. *Dravo Contracting Co.,* 302 U. S. 134, 160–161, it was not only assumed that such power existed in Congress but indeed the existence of the power to immunize Government contracts from state taxation was there relied upon as one of the reasons for denying that any implied constitutional immunity existed. And in *Bank* v. *Supervisors,* 7 Wall. 26, immunity for the legal tender notes (greenbacks) was rested expressly upon a statutory enactment, the Court thinking the matter to be one (p. 30) "clearly within the discretion of Congress". Although the

point was not discussed in *Oklahoma Tax Commission* v. *United States*, 319 U. S. 598, the case constitutes a flat holding that Congress may extend immuity beyond the limits of that constitutionally implied, for in that case the Court held that although there was no constitutional immunity, a statute of Congress immunized Indian lands from state estate taxation.[5]

The requirement has been stated in many cases that there must be an express provision by Congress if a purpose to exempt a private person from an otherwise constitutional tax is to be assumed. The Court sustained a general business license tax on a federal licensee because "the national government has not assumed * * * to exercise any control over the taxation * * * by the state." *Federal Compress Co.* v. *McLean*, 291 U. S. 17, 23. It sustained a tax on realty purchased with exempt benefits under the War Risk Insurance Act because "We see no token of a purpose to extend * * * immunity to permanent investments." *Trotter* v. *Tennessee*, 290 U. S. 354, 357. It overruled *Long* v. *Rockwood*, 277 U. S. 142, and sustained a state tax on copyright income in part because the Congress did not "provide that the right, or the gains from its exercise, should be free of tax." *Fox Film Corp.* v. *Doyal*, 286 U. S. 123, 127. The Court upheld a state tax on unrestricted Indian allotments because any intention of Congress to exempt "should be clearly manifested,"

[5] See also *Pittman* v. *Home Owners' Corp.*, 308 U. S. 21; *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95.

and "no exemption is clearly shown by the legislation in respect to these Indian lands." *Goudy* v. *Meath*, 203 U. S. 146, 149. Recognizing the power of Congress to exempt the property of its agents from taxation, the Court sustained such a tax because "Congress did not see fit to do so here." *Central Pacific Railroad* v. *California*, 162 U. S. 91, 125. Other cases similarly make express reference to the absence of a Congressional exemption, and, at least in part, for that reason sustain the challenged tax. *Fidelity & Deposit Co.* v. *Pennsylvania*, 240 U. S. 319, 323–324; *Hibernia Savings Society* v. *San Francisco*, 200 U. S. 310, 315–316; *Plummer* v. *Colex*, 178 U. S. 115, 134–135; *Western Union Tel. Co.* v. *Massachusetts*, 125 U. S. 530, 548; *Thomson* v. *Pacific Railroad*, 9 Wall. 579, 589, 592; *National Bank* v. *Commonwealth*, 9 Wall. 353, 363.

CONCLUSION

We think that Section 3701, Revised Statutes, does not apply to the obligation here involved but that Congress has constitutional power to declare such an immunity.

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OCTOBER, 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

No. 23.—October Term, 1944.

E. Jack Smith, Jack Clark, R. L. Rivers and W. Corby Smith, partners trading under the firm name of E. Jack Smith, Contractors, Petitioners,

vs.

Comer Davis, Reese Perry and John C. Townley, as Board of County Tax Assessors of Fulton County, et al.

On Writ of Certiorari to the Supreme Court of the State of Georgia.

[December 4, 1944.]

Mr. Justice Murphy delivered the opinion of the Court.

Petitioners are partners engaged in the contracting and construction business. They claim that on January 1, 1942, the United States owed them a balance of $29,831.10. This amount was due under the terms of two contracts for work, labor and materials furnished in connection with the construction of two airports for the use of the United States Army. Petitioners state that this balance "was in the nature of an open account and represented an account receivable" in their hands.

The respondent tax officials of Fulton County, Georgia, sought to assess this open account for state and county ad valorem tax purposes.[1] Petitioners brought this action in a state court to enjoin such assessment, claiming that the open account was an instrumentality of the United States and hence was immune from state or county taxation. The Supreme Court of Georgia overruled the trial court's dismissal of respondents' general demurrer and directed that the petition be dismissed. 197 Ga. 95, 28 S. E. 2d 148. We granted certiorari because of the important constitutional and statutory problems inherent in the case.

I. Petitioners claim that the proposed tax on the open account claim against the United States is a tax upon the credit of the

[1] Georgia Code (1933) § 92-101 subjects all real and personal property to taxation, except as otherwise provided by law, and § 92-102 includes within the definition of personal property "money due on open account or evidenced by notes, contracts, bonds, or other obligations, secured or unsecured."

federal government and upon its power to raise money to carry on military and civil operations. Hence, it is argued, such a tax is unconstitutional under the rule, first enunciated in *McCulloch* v. *Maryland*, 4 Wheat 316, that without Congressional action there is immunity from state and local taxation, implied from the Constitution itself, of all properties, functions and instrumentalities of the federal government.[2] We think otherwise.

In the first place, an open account claim against the United States does not represent a credit instrumentality of the federal government within the meaning of this constitutional immunity. The record here reveals only that petitioners claim that the United States owes them $29,831.10, which amount is carried by them as an account receivable and "is in the nature of an open account." There are the usual provisions of standard form government construction contracts calling for progress payments by the United States, with final payment being made after completion and acceptance of the work. There is no evidence of any bargaining for a credit extension of $29,831.10 or any provisions for the payment of interest on amounts due under the contracts. Nor is there any indication that any conditions precedent needed to be fulfilled or that, on the supposition that the amount was conceded to be correct by the United States, anything other than the formal mechanics of payment needed to be performed. We can only assume, therefore, that this is an ordinary open account as generally defined in the commercial world.[3] In other words, it is an unsettled claim or demand made by the creditor which appears in his account books. It is not evidenced by any written document whereby the United States, the debtor, has promised to pay this claim at a certain time in the future; nor is there any binding acknowledgement by the United States of the correctness of the claim. Conceivably the amount claimed to be due is incorrect or is subject to certain defenses or counterclaims by the United States, necessitating further settlement or adjustment. Such a unilateral, unliquidated creditor's claim, which by itself does not bind the United States and which in no way increases or affects the public debt, cannot be

[2] People *ex rel.* Astoria L. H. & P. Co. v. Cantor, 236 N. Y. 417, is cited in support of this argument.

[3] See Patop, Accountants' Handbook 229.30 (2d ed., 1934); Olson and Hallman, Credit Management 36 (1925); Jamison, Finance 56 ff (1927); Kramer v. Gardner, 104 Minn. 370, 373.

said to be a credit instrumentality of the United States for purposes of tax immunity.

In these respects a mere open account claim differs vitally from the type of credit instrumentalities which this Court, in the past has recognized as constitutionally exempt from state and local taxation.[4] Such instrumentalities in each instance have been characterized by (1) written documents, (2) the bearing of interest, (3) a binding promise by the United States to pay specified sums at specified dates and (4) specific Congressional authorization, which also pledged the faith and credit of the United States in support of the promise to pay. Thus in *The Banks* v. *The Mayor*, 7 Wall. 16, immunity was granted to interest-bearing certificates of indebtedness issued to public creditors pursuant to the Act of March 1, 1862, 12 Stat. 352, and the Act of March 17, 1862, 12 Stat. 370. United States stock, bearing interest of 6% and 7%, issued pursuant to the Act of April 20, 1822, 3 Stat. 663, was declared immune in *Weston* v. *Charleston*, 2 Pet. 449. See also *Bank of Commerce* v. *New York City*, 2 Black 620, holding immune interest-bearing stock of the United States authorized by various acts of Congress,[5] and *Bank of the Commonwealth* v. *Commissioner of Taxes*, 2 Black 635, note, declaring immune United States stock, bearing not over 5% interest, authorized by the Act of June 14, 1858, 11 Stat. 365. Interest-bearing bonds of the federal government authorized by law have consistently been held immune from state and local taxation. See, for example, *Home Savings Bank* v. *Des Moines*, 205 U. S. 503. None of these cases is authority for placing an open account claim under the protective umbrella of constitutional immunity.

It is clear, moreover, that the proposed taxation of this open account will not affect or embarrass in any substantial measure the power of the United States to secure credit or to secure aid from independent contractors for necessary military and civil con-

[4] In Bank v. Supervisors, 7 Wall. 26, this Court held that Congress had the constitutional power, and exercised it, to exempt non-interest-bearing United States legal tender notes, called "greenbacks." The decision did not rest on a finding that these notes were constitutionally exempt in and of themselves. Congress thereafter enacted a statute which in effect reversed this decision and allowed such notes to be taxed by states. Act of Aug. 13, 1894, 28 Stat. 278, Sec. 1, 31 U. S. C. § 425.

[5] This case involved stock issued under the Act of April 15, 1842, 5 Stat. 473, the Act of Jan. 26, 1847, 9 Stat. 118, the Act of March 31, 1848, 9 Stat. 217, and the Act of Feb. 8, 1861, 12 Stat. 129.

struction projects. The tax here is a uniform, non-discriminatory levy upon an unliquidated asset of the creditor and not upon a credit instrumentality of the United States. That this asset involves a claim against the federal government is no more fatal to the validity of the tax than the fact that in *James* v. *Dravo Contracting Co.*, 302 U. S. 134, the tax was levied on the contractor's gross receipts from the United States or the fact that in *Alabama* v. *King & Boozer*, 314 U. S. 1, the sales tax was placed on the sale of property to a contractor for use in a federal government project. The assets of an independent contractor that are derived from the profits of a government contract stand in no preferred constitutional position so far as taxation is concerned. They too must bear their fair share of the tax burden. And as long as that burden is non-discriminatory, there is no basis for assuming that contractors will be any less willing to enter into construction contracts with the United States. Nor is such a tax likely to affect or impair in any way their ability to discharge their duties efficiently. There is thus no practical reason for immunizing open accounts of this nature from taxation.

II. The claim that an open account is an obligation exempt from taxation under the provisions of Section 3701 of the Revised Statutes, 31 U. S. C. § 742, is also without merit. Congress by this section has provided that "All stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority." The plain meaning of these words and their legislative background dispel any doubt as to their inapplicability to an open account claim of a creditor of the United States.

Section 3701 on its face applies only to written interest bearing obligations issued pursuant to Congressional authorization. Stocks, bonds and Treasury notes[6] are obviously of that nature. And, under the rule of *ejusdem generis*, it is reasonable to construe the general words "other obligations," which allegedly cover open accounts, as referring only to obligations or securities of the same type as those specifically enumerated. *Hibernia Savings Society* v. *San Francisco*, 200 U. S. 310. Cf. *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84. This interpretation is in accord with the long

[6] The only Treasury notes that could be included within Section 3701 are interest bearing ones, in light of the provisions of the Act of Aug. 13, 1894, 28 Stat. 278, Sec. 1, 31 U. S. C. § 425, allowing notes and certificates payable on demand and circulating as currency to be taxed by the states.

established Congressional intent to prevent taxes which diminish in the slightest degree the market value or the investment attractiveness of obligations issued by the United States in an effort to secure necessary credit. It is unnecessary to extend such tax exemption, at least through statutory interpretation, to non-interest-bearing claims or obligations which the United States does not use or need for credit purposes. Tax exemptions being the exception rather than the rule, much clearer language evidencing an intent to immunize open account claims under Section 3701 is necessary under these circumstances.

The seven statutory exemption provisions[7] from which Section 3701 was derived further confirm the conclusion that Congress at no time intended to exempt open account claims. In all seven instances the exemption provisions appeared in statutes authorizing the issuance of interest-bearing bonds or Treasury notes. Five of the seven statutes specifically limited tax exemptions to the securities issued under those enactments; one extended exemption to "all stocks, bonds and other securities of the United States;"[8] and the other granted exemption to "all bonds, Treasury notes, and other obligations of the United States."[9] Thus, if the rule of

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[7] (1) Act of Feb. 25, 1862, 12 Stat. 345, 346, exempting "all stocks, bonds, and other securities of the United States;" (2) Act of March 3, 1863, 12 Stat. 709, 710, exempting "all the bonds and treasury notes or United States notes issued under the provisions of this act;" (3) Act of March 3, 1864, 13 Stat. 13, exempting "all bonds issued under this act;" (4) Act of June 30, 1864, 13 Stat. 218, exempting "all bonds, treasury notes, and other obligations of the United States;" (5) Act of Jan. 28, 1865, 13 Stat. 427, exempting "such notes" as were issued under the statute in lieu of bonds; (6) Act of March 3, 1865, 13 Stat. 468, 469, exempting "all bonds or other obligations issued under this act;" (7) Act of July 14, 1870, 16 Stat. 272, exempting "all of which said several classes of bonds [authorized to be issued under the Act] and the interest thereon."

[8] Act of Feb. 25, 1862, 12 Stat. 345, 346. This has been described in Congress as embracing "simply the public securities, such as are described as the permanent debt of the Government." Cong. Globe, p. 3184, 38th Cong., 1st Sess.

[9] Act of June 30, 1864, 13 Stat. 218. This provision comes closest to the wording of Section 3701. In speaking of the term "other obligations," Rep. Hooper said during the Congressional debates on the Act that "I understand, however, that this provision applies only to the interest-bearing obligations of the Government." Cong. Globe, p. 3183, 38th Cong., 1st Sess. He also stated that the committee in charge of the bill which eventually became law "found the general practice since the commencement of the Government had been to exempt from taxation the obligations of the Government issued by the United States under loan bills." *Ibid.*

This Act, moreover, obviously used the word "obligation" throughout to refer to written documents, making provisions relating to counterfeiting, altering, printing and photographing them. And in Section 13, the Act defined

ejusdem generis be applied to the two latter provisions, all seven exemptions were limited by their terms to interest-bearing securities or obligations authorized by Congress, for the payment of which the credit and faith of the United States was pledged. Full effect must also be given to the subsequent statutory provision allowing states to tax "legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency."[10] All of these related statutes are a clear indication of an intent to immunize from state taxation only the interest-bearing obligations of the United States which are needed to secure credit to carry on the necessary functions of government. That intent, which is largely codified in Section 3701, should not be expanded or modified in any degree by the judiciary.

The judgment of the Supreme Court of Georgia is affirmed.

Affirmed.

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the words "obligation or other security of the United States," as used in this Act, to include and mean "all bonds, coupons, national currency, United States notes, treasury notes, fractional notes, checks for money of authorized officers of the United States, certificates of indebtedness, certificates of deposit, stamps, and other representatives of value of whatever denomination, *which have been or may be issued under any act of Congress.*" (Italics added.)

[10] Act of Aug. 13, 1894, 28 Stat. 278, Sec. 1, 31 U. S. C. § 425. See notes 4 and 6, *supra*.